

Securities Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to David T. Copehafer, Acting Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer for the Securities/Exchange Commission, Project Nos. 3235-0074; 3235-0065; 3235-0072; 3235-0073; 3235-0067; 3235-0423; 3235-0418; 3235-0258; 3235-0257; and 3235-0256, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35523; File Nos. SR-Amex-95-13; SR-CBOE-95-13, SR-NYSE-9504, SR-PSE-95-05, and SR-PHLX-95-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc., Relating to Permanent Approval of the Hedge Exemption Pilot Programs

March 22, 1995

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the Chicago Board Options Exchange, Inc. ("CBOE"); on February 3, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX"); on February 21, 1995, the Pacific Stock Exchange, Inc. ("PSE"); on February 28, 1995, the New York Stock Exchange, Inc. ("NYSE"); and on March 14, 1995, the American Stock Exchange, Inc. ("Amex") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes filed by the Amex and PHLX request permanent approval of the Exchanges' pilot program for exemptions from equity option position limits for certain hedged positions.¹

The proposals filed by the CBOE, NYSE, and the PSE request permanent approval of the Exchanges' pilot programs for position limit exemptions for certain hedged equity option positions and certain stock index option positions.

The text of the proposals are available at the Office of the Secretary of the respective Exchanges and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved pilot programs proposed by the Amex and the PHLX providing exemptions from positions limits for certain fully hedged equity option positions.² In addition, the Commission has previously approved pilot programs proposed by the CBOE, the NYSE and the PSE providing exemptions from position limits for certain fully hedged equity option positions and/or stock index option positions.³ The Exchanges'

¹ Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

² See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

³ See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving CBOE's equity option hedge exemption pilot programs); 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988) (approving CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving NYSE's equity option and stock index option hedge exemption pilot programs);

pilot programs were most recently extended through May 17, 1995.⁴

Each of the pilot programs allow the underlying hedged positions to include securities that are readily convertible into common stock.⁵ Under all of the pilot programs, exercise limits continue to correspond to position limits, so that investors are allowed to exercise, during five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the pilot program.⁶

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to protect investors and the public interest and to remove impediments and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments on the proposed rule changes were neither solicited nor received.

25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving PSE's equity option hedge exemption pilot program); and 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order approving PSE's stock index option hedge exemption pilot program).

⁴ See Securities Exchange Act Release Nos. 24986 (November 18, 1994), 59 FR 60856 (November 28, 1994) (order approving File Nos. SR-Amex-94-49, SR-CBOE-94-41, SR-PSE-94-33, and SR-PHLX-94-53); and 35194 (January 5, 1995), 60 FR 2800 (January 11, 1995) (order approving File Nos. SR-NYSE-94-47).

⁵ Under the pilot, the Exchanges must determine on a case-by-case basis whether an instrument that is being used as the basis for an underlying hedged position is readily and immediately convertible into a security that is convertible at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. In addition, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. See, e.g., Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339 (September 2, 1993) (order approving File No. SR-CBOE-91-43).

⁶ Exercise limits prohibits the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

- (a) By order approve such proposed rule changes, or
- (b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by April 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35519; File No. SR-CBOE-95-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Solicited Transactions

March 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 14, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify paragraph (e) of Rule 6.9 concerning solicited transactions so as to eliminate the requirement that the terms of the matching order be disclosed to the trading crowd.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Paragraph (e) of Rule 6.9 restricts the ability of a member to trade options, securities underlying such options, and related instruments while in possession of knowledge of all the material terms of an "original order" and a solicited matching order unless either of two conditions is met. One of the conditions is that all the terms of both the original

order and the matching order be disclosed to the trading crowd.²

The Exchange now proposes to amend paragraph (e) to eliminate the requirement that the terms of the matching order be disclosed to the trading crowd. Thus, a member will be able to trade options, the securities underlying such options, and any related instruments once the terms of the original order have been disclosed. Under the Exchange's proposal, when there has been advance solicitation of the other side of an original order, a member (or associated person) with knowledge of the original order and a matching responsive order may not buy or sell the option or the underlying security until the terms of the original order are disclosed to the trading crowd; once those terms are disclosed, however, the member may trade even if the terms of the matching order are not disclosed. As explained below, this modification would place solicited parties on an equal footing with Exchange members who have knowledge of the terms of the original order only, and would conform the trading restriction in paragraph (e) to the various priority provisions of Rule 6.9 and Interpretation .02 thereunder, which generally require disclosure only of the terms of an original order, not the terms of a matching solicited order.

The Exchange believes that this amendment is appropriate to achieve the primary purpose of Rule 6.9, which is to facilitate and regulate solicitation without imposing undue restrictions on trading, particularly anticipatory hedge transactions. As currently structured, the trading restrictions in paragraph (e) impose a special and substantial burden on any solicited party who was indicated, in response to a solicitation, an intention to place a matching responsive order. Under the present rule, such a solicited party may not trade based on knowledge of the impending solicited transaction, even if the original order has been fully disclosed to the crowd, until the solicited order is also disclosed.

In contrast to this treatment of solicited parties, paragraph (e) does not restrict trading by other CBOE members who know the terms of the disclosed order but who, if solicited, have not indicated an intention to trade at the original order's limit and who are otherwise unaware of any specific matching solicited order. Such parties may trade under the current rule even

² The other such condition is that the solicited order can no longer reasonably be considered imminent in view of the passage of time since the solicitation.

⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).